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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,016	03/23/2001	Betsy P. Colwell	02200-1	9104

7590 08/29/2005

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/816,016	Applicant(s) COLWELL, BETSY P.	
	Examiner Andrea M. Valenti	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7-12,14-23,26-30,32-37 and 39-49 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 1,3-5,7-12,14-23,26,33-35,40 and 46-49 is/are allowed.
6) ☒ Claim(s) 27-30, 32, 36, 37, 39, and 41-45 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Requirement for Information

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows:

The requirement for information is made regarding the citation for, the **dates** initially published and copies of any advertising and promotional literature prepared for any goods or services the claimed subject matter has been embodied in.

The IDS filed 18 June 2001 listed Droll Yankees "Extending the Sanctuary Series..." with regard to the RETRO Fit Cage. Applicant failed to provide a date of its first publication. The examiner is requesting a statement that the RETRO Fit Cage is made by the same inventor and owned by the same assignee as identified in the pending application (i.e. RETRO Fit Cage is in fact applicant's invention) and that the invention was not disclosed/published on the web or in a catalog not more than one year prior to filing date of the pending application. If in fact, RETRO Fit Cage is applicant's invention, when did it first get published?

Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment.

This requirement is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete reply to this requirement. The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-30, 32, 36, 37, 39, and 41-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over DUNCRAFT, Winter & Holidays 1999 "specialties for Enjoying Wild Birds" Penacook, NH, pgs 1-48 in view of U.S. Patent No. 5,558,040 to Colwell et al.

Regarding Claims 27-30, 32, 36, 37, and 39, DUNCRAFT teaches a selective bird feeder, comprising: a selective housing having a cylindrical sidewall and including apertures having a width ranging from about 1.3 inches to about 1.7 inches and the sidewall having a base; a cover separate from and supported at least on the cylindrical sidewall of the selective housing; a cylindrical seed holder contained within and spaced apart from the cylindrical sidewall of the selective housing and having a base; the seed holder including a base and a cylindrical seed housing that together defines a compartment for bird seed (if there wasn't a base the bird seed would all fall out of the

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DUNCRAFT device) and a seed holder cap closing the top of the cylindrical seed holder; a hanger attached to the seed holder; the cover including an aperture through which a portion of the seed holder extends (DUNCRAFT item 180M, 181M, 188M, 161M); a fastening member constructed and arranged to removably secure the base of the selective housing to the base of the seed holder (based on the broadly recited limitation of "fastening member" the examiner maintains that DUNCRAFT in fact teaches this member or else the device of DUNCRAFT would come apart and the bottom would drop down when suspended).

DUNCRAFT is silent on a clamp separate from said hanger disposed between said cover and cap to prevent removal of said cover and the clamp comprising an annular member that is secured about the seed holder cylindrical housing. However, Colwell teaches a clamp with an annular member for preventing the removal of a cover on a seed holder (Colwell #85 and 81) placed about the top/cover along a vertical member. It would have been obvious to one of ordinary skill in the art to modify the teachings of DUNCRAFT with the teachings of Colwell at the time of the invention to prevent vertical displacement of the cover as taught by Colwell and for a structurally secure assembly in high winds to prevent vertical displacement along the length of the seed holder. DUNCRAFT as modified by Colwell inherently locates the clamp secured to the seed hold cylindrical housing, this modification is merely the substitution of an alternate equivalent vertical member taught by Colwell performing the same intended function.

Regarding Claim 41, DUNCRAFT as modified teaches the clamp comprises a spring claim (Colwell #85 and Fig. 8).

Regarding Claim 42, DUNCRAFT as modified teaches the clamp comprises a rib formed in the outer surface (Colwell #85 the clamp itself is the rib).

Regarding Claim 43, DUNCRAFT as modified is silent on the rib being an annular rib integrally formed with the seed holder. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of DUNCRAFT at the time of the invention since the modification is merely make a known element integral as an engineering manufacturing design choice to prevent the consumer from loosing pieces to the assembly and does not present a patentably distinct limitation [*In re Larson*, 340 F.2d 965, 967, 144 USPQ 347, 349 (CCPA 1965)].

Regarding Claim 44, DUNCRAFT as modified is silent on a wing nut clamp as another possible embodiment for the design. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of DUNCRAFT at the time of the invention since the modification is merely the selection of an alternate old and notoriously well-known fastening means performing the same intended function for prevent vertical displacement, selected merely as an engineering manufacturing design choice to provide more ergonomic ease of assembly for the elderly.

Regarding Claim 45, DUNCRAFT as modified is silent on the annular rib on the seed holder being below the cover. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of DUNCRAFT at the time of the invention since the modification is merely shifting the location of a known element

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(Colwell #85) to prevent vertical displacement downward when a large load rests on the top.

Regarding Claim 39, DUNCRAFT as modified teaches the top is substantially dome-shaped, and the outer edge of the top extends below the upper edge of the selective housing (DUNCRAFT 188M).

Allowable Subject Matter

Claims 1, 3-5, 7-12, 14-23, 26, 33-35, 40 and 46-49 are allowed pending the response to the Requirement for Information.

Response to Arguments


Applicant's arguments filed 24 June 2005 have been fully considered but they are not persuasive. Examiner maintains that applicant has not patentably distinguished over the teachings of the cite prior art. DUNCRAFT teaches each and every limitation claimed by applicant, but fails to teach the clamp structure. However, Colwell et al teaches it is old and notoriously well-known to position a clamp along a vertical member to hold a cover of a bird feeder in place along the vertical member. It would have been obvious to one of ordinary skill in the art to modify the teachings of DUNCRAFT with the teachings of Colwell since the modification is merely the placement of the clamp of Colwell along an alternate equivalent vertical cylindrical member performing the same intended function of preventing displacement of a bird feeder cover.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

23 August 2005